



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING  
3430 Courthouse Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350

Marsha S. McLaughlin, Director

[www.howardcountymd.us](http://www.howardcountymd.us)

FAX 410-313-3467

TDD 410-313-2323

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## TECHNICAL STAFF REPORT

*Petition Accepted on October 26, 2010  
Planning Board Meeting of March 4, 2010  
County Council Hearing to be scheduled*

**Case No./Petitioners:** ZRA-126 – Kimberly Harbin Taylor and Michael Taylor

**Request:** Zoning Regulation Amendment to amend Section 131 Conditional Uses to establish a new use category, "Farmer's Market and Produce Stand", as a new Section 131.N.21.

**Department of Planning and Zoning Recommendation:**

**APPROVAL, WITH REVISIONS**

### I. DESCRIPTION OF PROPOSAL

- The Petitioners propose one amendment to the Zoning Regulations. This amendment would create a new Conditional Use category entitled Farmer's Market and Produce Stand, which would only be permitted on properties in the R-20 District subject to certain limiting criteria.

The Petitioners operate an existing produce stand use on a 1.29 acre lot located at the northwestern corner of the MD 99 intersection with Old Mill Road/Bethany Lane. This use and site were the subjects of two cases; BA 07-006N, which was a request for confirmation of a nonconforming use for the produce stand, and ZB 1073M, which was a request to rezone the property from R-20 to B-1 with documented site plan for a farm stand and open air food market.

In the BA 07-006N case, the Department of Planning and Zoning ("DPZ") found evidence that the produce stand is not a legal nonconforming use and recommended denial. The Petitioner did not proceed further with the request, and the case was dismissed from the Unscheduled Docket on January 7, 2008. In the ZB 1073M case, both DPZ and the Planning Board recommended denial, and the case is currently on the Unscheduled Docket.

- This regulation amendment request is therefore a third proposal to allow the produce stand to continue operating, if this request is approved and the Petitioners are successful in obtaining Conditional Use approval also. As expressed in the petition, the Petitioners' stated reason for the requested amendment is "...to allow [produce stands] near residential communities and provide fresh and different products outside of a store/commercial area setting."

## I. DESCRIPTION OF PROPOSAL

As further justification for the requested amendment, it is also stated in the petition that "Farmers markets and produce stands provide local outlets for local farmers to sell their product" and "...there could be nothing detrimental to a farmers market/produce stand approved by the Hearing Examiner, and only benefits to the community."

- **The proposed criteria for the Farmer's Market and Produce Stand use are apparently devised to limit the potential for such uses to a great extent. These require that such a use cannot be located on lots that are less than one acre nor on lots greater than two acres, that the site must have frontage on and direct access to a Minor Arterial road, and that the property "...shall have no other use".**

It is stated in the petition that based on these criteria, there are five properties in the entire County other than the Petitioner's property that could be eligible for the Conditional Use. These properties are specifically identified, and details and photographs of each are provided.

- **The subsections proposed to be amended and the amendment text is as follows (CAPITALS indicates text to be added):**

§ 131.N.21

A CONDITIONAL USE MAY BE GRANTED IN THE R-20 ZONING DISTRICT FOR A FARMER'S MARKET AND/OR PRODUCE STAND, PROVIDED THAT:

1. THE USE MAY NOT BE LOCATED ON A LOT LESS THAN ONE (1) ACRE NOR LARGER THAN TWO (2) ACRES;
2. THE PROPERTY UPON WHICH THE FARMER'S MARKET AND/OR PRODUCE STAND IS APPROVED SHALL HAVE NO OTHER USE.
3. THE USE MAY INCLUDE THE RETAIL SALE OF CROPS, PRODUCE, FLOWERS, PLANTS AND SEASONAL DISPLAYS, BAKED GOODS, DAIRY PRODUCTS AND BOTTLED/PACKAGED PRODUCTS.
4. THE SITE HAS FRONTAGE ON A DIRECT ACCESS TO A MINOR ARTERIAL ROAD AS DESIGNATED IN THE GENERAL PLAN.

## II. EXISTING REGULATIONS

- **There are no existing regulations for this specific use category as a Conditional Use. In the B-1, B-2 and SC districts, "Farmers markets and farm produce stands" are permitted as a matter of right as a type of retail development, although the term "Farmers markets and farm produce stands" is not specifically defined. Also, farmers markets that are sponsored by the government are permitted by right as a government use.**

## II. EXISTING REGULATIONS

- A use category for "Farm Stands" also exists and is specifically defined as a use located on a farm in which farm products grown or produced on that same farm are sold. Depending on the size of the farm stand, such farm stand uses are either permitted by-right as an accessory use to the principal farm use or must first obtain a permit issued by the Department of Planning and Zoning.

## III. BACKGROUND INFORMATION

### A. Scope of Proposed Amendments

- As demonstrated by the Petitioner, based upon the proposed criteria there apparently are a very limited number of potential R-20 sites that could be eligible for this Conditional Use. However, it should be noted that this primarily depends on how the proposed Section 131.N.21.b. is interpreted regarding how the property upon which the use is proposed "...shall have no other use."

In addition, the properties the Petitioners use to demonstrate the limited number of sites complying with the lot size criteria are existing properties, but there is always the potential to create new size-complying lots in other locations through the subdivision process. These issues are addressed in more detail below in the Evaluations and Conclusions section of this report.

### B. Agency Comments

- The following agencies had no objections to the proposal:
  1. Department of Recreation & Parks
  2. Bureau of Environmental Health
  3. Department of Fire and Rescue Services
  4. Department of Inspections, Licenses and Permits

## IV. EVALUATIONS AND CONCLUSIONS

### A. Relation to the General Plan

- In addressing the issue of how this proposal relates to the General Plan, the Petitioners refer to certain items in the Community Structure and Focus section of the Community Conservation and Enhancement chapter. The principal one is a statement made in Box 5-1, Key Concepts that Define Community Structure, under the planning and design concept concerning "Places", that notes "Neighborhoods, although primarily residential, should ideally have a school, park, convenience shopping and a civic gathering area within walking distance. The goal for neighborhoods, over time, is to include more diverse uses so that daily needs are met closer to home."

This basic concept is expressed to the greatest extent in the General Plan under the topic of mixed-use developments, which are certainly encouraged by the General Plan.

#### IV. EVALUATIONS AND CONCLUSIONS

##### A. Relation to the General Plan

Having small local convenience retail shopping located within principally residential neighborhoods is generally considered to be an acceptable and beneficial planning principal, and the evidence of this can be seen in the small convenience retail areas to be found in certain Columbia neighborhoods, and also in the purpose statement of the CC (Convenience Center) District, which was established with good intentions but has been little used.

- The Department of Planning and Zoning agrees that allowing the potential for farmers markets and produce stands in the R-20 District through the Conditional Use process follows this basic concept of incorporating small convenience retail into residential neighborhoods.
- In the petition, it is stated that the Petitioners' "...stand has provided a sales outlet for many local farms." It is not known to what extent the Petitioners' existing or proposed farmers market and produce stand does/will sell local produce grown on farms located in the County, but establishing a place to market local produce within R-20 neighborhoods would certainly be in harmony with the Promotion of Farm Products goal of Preservation of the Rural West Policy 3.7, mainly because it would be more convenient for residents of the neighborhood to purchase this local produce nearby to where they live, rather than needing to travel to the Rural West to do so.

##### B. Relation to the Zoning Regulations

- In the Statement of Legislative Intent for Conditional Uses in Section 131.A., it is stated that Conditional Uses are uses permitted in certain zoning districts that are presumed to be "...generally appropriate and compatible in the specified districts."

On this basis, if this request is approved, the general concept of having such a farmers market and produce stand in a R-20 district would be considered appropriate, while the precise nature and appropriateness of a specific farmers market and produce stand proposal would become an issue of the Conditional use approval process.

- As noted above, a farmers market and produce stand use is permitted by right in the B-2 District. Having a use permitted by right in the B-2 District, but also permitted subject to Conditional use in the R-20 District, is not a new concept in the Zoning Regulations.

Kennels and pet grooming establishments are uses which are similarly permitted by right in the B-2 District, but also permitted subject to Conditional use in the R-20 District. Child day care centers, funeral homes, and private schools are also permitted by right in the B-2 District, and in R-20 with a Conditional Use. Retail nurseries also followed this same pattern for a considerable number of years until the Special Exception/Conditional Use category was removed from being eligible in the R-20 District in 2000.

## IV. EVALUATIONS AND CONCLUSIONS

C. Other Issues

- One important issue in allowing farmers market and produce stand uses as a Conditional Use category in the R-20 District is to limit the potential total number of such uses. The amendment as devised by the Petitioners' purports to do this by several measures in the criteria, including requiring that the lot have no other use, but as noted above, just because there is such a requirement does not prevent the lot from having a previous "other use" that is demolished and removed prior to the Conditional Use application being submitted.

In other words, the "limited" number of potential R-20 sites is not as limited as it may seem. Similarly, a property that is currently larger than the proposed size limitation on lots in the one to two acre range, could be subdivided at some point prior to the Conditional Use case, so the potential number of sites in terms of size is not finite. It is therefore recommended that the amendment be revised to include a requirement that the lot upon which the Conditional Use is proposed must have existed in the proper size and must have had no other use at the time this Zoning Regulation Amendment becomes effective, if it is approved.

- Another limitation issue for this case is about the concepts of proximity and competition. It should not be acceptable to allow the potential for such uses to proliferate in a particular area. It also should be shown that there is an actual need for such a use which is not being met in existing retail establishments serving the vicinity. It is recommended that the amendment be revised to include criteria to address these concepts. The recommended amendment text is as follows  
(UNDERLINED CAPITALS indicates text to be added, ~~[[TEXT IN DOUBLE BRACKETS]]~~ indicates text to be deleted):

A CONDITIONAL USE MAY BE GRANTED IN THE R-20 ZONING DISTRICT FOR A FARMER'S MARKET AND/OR PRODUCE STAND, PROVIDED THAT:

1. THE USE MAY NOT BE LOCATED ON A LOT LESS THAN ONE (1) ACRE NOR LARGER THAN TWO (2) ACRES;
2. THE ~~[[PROPERTY]]~~ LOT UPON WHICH THE FARMER'S MARKET AND/OR PRODUCE STAND IS ~~[[APPROVED]]~~ PROPOSED SHALL HAVE NO OTHER USE.
3. THE USE MAY INCLUDE THE RETAIL SALE OF CROPS, PRODUCE, FLOWERS, PLANTS AND SEASONAL DISPLAYS, BAKED GOODS, DAIRY PRODUCTS AND BOTTLED/PACKAGED FOOD PRODUCTS.
4. THE SITE HAS FRONTAGE ON AND DIRECT ACCESS TO A MINOR ARTERIAL ROAD AS DESIGNATED IN THE GENERAL PLAN.
5. THE LOT UPON WHICH THE FARMER'S MARKET AND/OR PRODUCE STAND IS PROPOSED SHALL HAVE BEEN IN THE CURRENT SIZE AND SHALL HAVE HAD NO OTHER USE AS OF [Insert the effective date of ZRA 126].

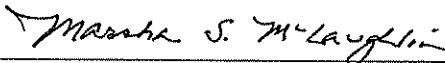
PETITIONERS: Kimberly Harbin Taylor and Michael Taylor

6. THERE SHALL BE NO OTHER FARMER'S MARKET AND/OR PRODUCE STAND USE LOCATED ON ANOTHER LOT WITHIN 5 MILES FROM THE LOT UPON WHICH THE FARMER'S MARKET AND/OR PRODUCE STAND IS PROPOSED, AS MEASURED IN A STRAIGHT LINE BETWEEN THE CLOSEST POINTS OF BOTH LOTS.
7. THERE IS A PROBABILITY OF A REASONABLE PUBLIC NEED FOR THE PROPOSED FARMER'S MARKET AND/OR PRODUCE STAND AS DEMONSTRATED BY MARKET DATA. AN EVALUATION OF THIS CRITERIA OF A PROBABILITY OF A REASONABLE PUBLIC NEED MAY, IN ADDITION THE MARKET DATA, TAKE INTO CONSIDERATION THE PROXIMITY OF RETAIL STORES SELLING PRODUCE AND TESTIMONY FROM RESIDENTS LIVING IN THE NEIGHBORHOOD(S) SURROUNDING THE PROPOSED SITE ON THE ISSUE AS TO WHETHER SUCH A NEED IS BELIEVED TO EXIST.

V. RECOMMENDATION

*APPROVAL, WITH REVISIONS*

For the reasons noted above, the Department of Planning and Zoning recommends that ZRA- 126 as noted above, be APPROVED with the revisions noted above.

  
Marsha S. McLaughlin, Director

2/18/10

Date

MM/JRL/jrl

NOTE: The file on this case is available for review at the Public Service Counter in the Department of Planning and Zoning.